

### **REMARKS**

This amendment is in response to the Non-Final Office Action mailed April 19, 2007. Claims 1-25, 27, and 28 are pending. Claims 1, 2, 8, 12, 24, and 25 have been amended. No new matter has been added. Based on the following reasons, the pending claims should be in condition for allowance.

#### **§101 Rejections**

Claim 25 was rejected under 35 U.S.C. §101 because the Office Action stated that the claimed invention is directed to non-statutory subject matter. Applicants respectfully disagree. Amended Claim 25 now recites: “A computer readable medium tangibly embodying machine executable instructions stored thereon, configured to be executed by at least one processor, the medium comprising ...” This amendment is supported by the Specification, the plain meaning of the term “computer readable medium,” and the knowledge of one skilled in the art at the time of the invention. See e.g., Specification, p. 5, line 3-7. It is well established that such media are statutory subject matter. Although Applicants disclose that there may be many other types of computer-readable media, including possibly non-statutory media, *the recited type of computer readable media claimed in amended Claim 25 is clearly statutory*. Such statutory computer readable media, as the Office Action points out, includes, but is not limited to “disks, memory, etc.” Office Action, p. 21. At least for this reason, Amended Claim 25 should be in condition for allowance.

#### **§103 Rejections**

Claims 8-10, 12, 14-17, 19, 21, and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,370,620 to Wu et al. (“Wu”) in view of U.S. Patent No. 6,542,964 to Scharber (“Scharber”) and U.S. Patent No. 6,374,241 to Lamburt et al. (“Lamburt”). Applicants respectfully traverse this rejection.

Wu in view of Scharber and Lamburt does not teach or suggest “if the frequency of requests for a plurality of different static content exceeds a threshold, forwarding the request over the network to a first cache ...,” as recited in amended Claim 8. The amendment is supported by the Specification. See, e.g., Specification p. 15.

In contrast, Wu discloses “the frontend router 803 should service *only requests for a given object* that exhibit reference locality, in other words, requests for *a given object* that occur closely enough together in time to justify devoting space in the cache to storing that given object. One approach to identifying requests for such objects is to count the requests for *a given non-assigned-partition object 103*.” Wu, Col. 6, line 48-54 (emphasis added). In other words, Wu *only* takes into account a request for a *single* “given object,” and *not* “the frequency of requests for a plurality of different static content.” Therefore, Wu does not teach or suggest this limitation. Moreover, Wu in combination with Scharber and Lamburt does not teach or suggest this limitation either. At least for this reason, the prior art references do not make obvious amended Claim 8. Therefore, amended Claim 8 should be in condition for allowance.

Amended Claim 12 recited similar, albeit different limitations as amended Claim 8 and should be allowed for substantially similar reasons.

Moreover, the cited art references do not teach or suggest “a higher frequency greater than a lower frequency associated with a lower level cache” as recited in amended Claim 12. This limitation finds support in the Specification. See e.g., Specification, p. 14, line 10-18.

As recited, amended Claim 12 recites two frequencies, each associated with a different cache and/or request(s). Wu does not teach using the two such frequencies and using two caches. See, e.g., Col. 6, line 43-59 (discussing using one frequency and one threshold, and not two frequencies); Wu Abstract (discussing using one cache, and not a plurality of caches). At least for this reason, Wu does not teach or suggest this limitation.

Moreover, while Lamburt discloses using two caches, Lamburt does not disclose using two frequencies in its determinations. Lamburt discloses that “[g]enerally the “hot” cache may include the *most recently used items* and the cold cache the remaining items.” See e.g., Lamburt, col. 27, lines 42-43. A “most recently used item” is clearly different than a frequency of a request. A request may be *recently* received, but may not be *frequently* received, and vice versa. Therefore, Lamburt does not teach or disclose this limitation. Similarly, neither does Scharber. The

combination of the cited art references do not teach or suggest this limitation, either. Therefore, Wu in view of Scharber and Lamburt does not make obvious amended Claim 12. Thus, amended Claim 12 should be in condition for allowance.

Amended Claim 25 recite similar, albeit different limitations as amended Claim 12 and should be allowed for substantially similar reasons.

Claims 1, 24, and 27-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,566,349 to Trout ("Trout") in view of Lamburt and Scharber. Applicants respectfully traverse this rejection.

The cited art references do not teach or suggest "wherein the plurality of caches include at least one hot cache, wherein the plurality of caches is organized in a hierarchy and wherein a higher level cache in the hierarchy is associated with a higher frequency of requests for static content than a lower frequency of requests for static content associated with a lower level cache, and wherein forwarding the request over the network to the plurality of caches that enable access to the static content further comprises recursively forwarding through the hierarchy until a frequency of the request for static content exceeds a threshold associated with the hot cache," as recited by amended Claim 1.

This limitation finds support in the Specification and is similar, albeit different, than the limitations recited in amended Claim 12 and 25, discussed above. See e.g., Specification, p. 14, line 10-18. As discussed above, neither Scharber nor Lamburt teaches or suggests this limitation. Also, Trout, either alone or in combination with Scharber or Lamburt does not teach this limitation. Therefore, Trout in view of Scharber and Lamburt does not make obvious amended Claim 1. Thus, amended Claim 1 should be in condition for allowance.

Amended Claims 24 and 27 recite similar, albeit different limitations as amended Claim 1 and should be allowed for substantially similar reasons.

Claim 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over Trout, Lamburt and Scharber further in view of U.S. Patent No. 6,094,706 B1 to Factor et al. ("Factor"). Applicants respectfully traverse this rejection. As discussed above, amended Claim 1, from which Claim 2 depends, is not taught or suggested by Trout, Lamburt, and Scharber. Moreover, Factor alone or in combination with the other references does not teach or suggest amended Claim 1. Therefore, for at least similar reasons as for amended Claim 1, Claim 2 should also be in condition for allowance.

Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Trout, Lamburt and Scharber further in view of U.S. Patent No. 5,590,301 to Guenther et al. ("Guenther"). Applicants respectfully traverse this rejection. As discussed above, amended Claim 1, from which Claim 3 depends, is not taught or suggested by Trout, Lamburt, and Scharber. Moreover, Guenther alone or in combination with the other references does not teach or suggest amended Claim 1. Therefore, for at least similar reasons as for amended Claim 1, Claim 3 should also be in condition for allowance.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Trout, Lamburt and Scharber further in view of U.S. Patent No. 6,785,704 B1 to McCanne ("McCanne"). As discussed above, amended Claim 1, from which Claim 4 depends, is not taught or suggested by Trout, Lamburt, and Scharber. Moreover, McCanne alone or in combination with the other references does not teach or suggest amended Claim 1. Therefore, for at least similar reasons as for amended Claim 1, Claim 4 should also be in condition for allowance.

Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Trout, Lamburt and Scharber further in view of U.S. Patent No. 6,415,359 B1 to Kimura et al. ("Kimura"). As discussed above, amended Claim 1, from which Claim 5 depends, is not taught or suggested by Trout, Lamburt, and Scharber. Moreover, Kimura alone or in combination with the other references does not teach or suggest amended Claim 1. Therefore, for at least similar reasons as for amended Claim 1, Claim 5 should also be in condition for allowance.

Claims 6-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Trout, Lamburt and Scharber further in view of U.S. Patent No. 6,233,606 B1 to Dujari ("Dujari"). As discussed above, amended Claim 1, from which Claims 6-7 depend, is not taught or suggested by Trout, Lamburt, and Scharber. Moreover, Dujari alone or in combination with the other references does not teach or suggest amended Claim 1. Therefore, for at least similar reasons as for amended Claim 1, Claims 6-7 should also be in condition for allowance.

Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wu and Scharber in view of U.S. Patent No. 6,330,561 B1 to Cohen et al. ("Cohen"). As discussed above, amended Claim 8, from which Claim 11 depends, is not taught or suggested by Wu and Scharber. Moreover, Cohen alone or in combination with the other references does not teach or suggest amended Claim 8. Therefore, for at least similar reasons as for amended Claim 8, Claim 11 should also be in condition for allowance.

Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wu, Scharber, and Lamburt in view of Cohen and U.S. Patent No. 6,591,341 B1 to Sharma ("Sharma"). As discussed above, amended Claim 12, from which Claim 13 depends, is not taught or suggested by Wu, Scharber, and Lamburt. Moreover, Sharma alone or in combination with the other references does not teach or suggest amended Claim 12. Therefore, for at least similar reasons as for amended Claim 12, Claim 13 should also be in condition for allowance.

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wu, Scharber, and Lamburt in view of Factor. As discussed above, amended Claim 12, from which Claim 18 depends, is not taught or suggested by Wu, Scharber, and Lamburt. Moreover, Factor alone or in combination with the other references does not teach or suggest amended Claim 12. Therefore, for at least similar reasons as for amended Claim 12, Claim 18 should also be in condition for allowance.

Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wu, Scharber, and Lamburt in view of Sharma. Applicants respectfully traverse this rejection. As discussed

above, amended Claim 12, from which Claim 20 depends, is not taught or suggested by Wu, Sharma, and Lamburt. Moreover, Sharma alone or in combination with the other references does not teach or suggest amended Claim 12. Therefore, for at least similar reasons as for amended Claim 12, Claim 20 should also be in condition for allowance.

Claims 22-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wu and Scharber in view of Dujari. Applicants respectfully traverse this rejection. As discussed above, amended Claim 12, from which Claims 22-23 depend, is not taught or suggested by Wu and Sharma. Moreover, Dujari alone or in combination with the other references does not teach or suggest amended Claim 12. Therefore, for at least similar reasons as for amended Claim 12, Claims 22-23 should also be in condition for allowance.

### CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: September 19, 2007

Respectfully submitted,

By 

Hiep Hieu Nguyen

Registration No.: 60,305

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(206) 292-8600

(212) 527-7701 (Fax)

Attorneys/Agents For Applicant